JAN 11 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 748

JACK PINKSTON, GARNISHEE,
Petitioner,

vs.

NICHOLAS M. CARTER, ET UX
RUTH A. CARTER,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

JACK PINKSTON, Petitioner, Pro Se,
A Member of the Bar of this Court
8403 Georgia Avenue
Silver Spring, Maryland
Phone 585-2844

FRANKLIN PRESS, INC., PRINTERS, GAITHERSBURG, MD.

INDEX

	Page
Petition for Writ of Certiorari	1
Opinions below	1-2
Grounds of Jurisdiction	2
Question presented	2-3
Statutes Involved	3
Statement	3-5
Argument and Authorities amplifying reasons for granting writ	6-19
Conclusion	19-20
Prayer	20

CASES CITED

Bowles v. Stonebraker, 1949, Mun. App., D. C., 65 A.2d 575	14
Collins v. McDonald, 258 U. S. 416, 42 S. Ct. 326, 66 L. Ed. 692	16
Durfee v. Duke, No. 37, October Term, 1963, S. Ct.	4
Durst v. Tautges, Wilder & McDonald, 7 Cir. 44 F.2d 507	17
Engle v. Manchester, 46 App. D. C. 220	17
Galpin v. Page, 85 U. S. 350, 18 Wall 350, 21 L. Ed. 959	16
Harkin v. Brundage, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457	15

INDEX (Continued)

Hollige v. Crumpler, 63 App. D. C. 330 17

J. & H Stables, Inc. v. Robinson, 1960, 221 Md. 365, 157 A.2d 451 17

Lamb v. Schmidt, 285 U. S. 222, 52 S. Ct. 317, 76 L. Ed. 720 17

McClaughry v. Deming, 186 U. S. 49, 22 S. Ct. 786, 46 L. Ed. 1049 16

Page Co. v. McDonald, 261 U. S. 446, 43 S. Ct. 416, 67 L. Ed. 737 17

Penn Co. v. Pennsylvania, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850 15

Peterson v. Sucro, 1938, C. C. A., 4 Cir., 93 F.2d 878, 882 14

Pinkston v. Carter, 150 A.2d 629 17-18

Robertson v. Gordon, 226 U. S. 311, 33 S. Ct. 105, 57 L. Ed. 236 6

Stewart v. Ramsey, 242 U. S. 128, 37 S. Ct. 44, 61 L. Ed. 192 17

Stutsman v. Hilltop Farm & Feed Co., (Iowa), 45 N. W. 2d 892 17

Vanvakis, in Re, 99 N. Y. S. 2d 406 17

Warm Springs Irr. Dist. v. May, 1941, 9 Cir., 117 F.2d 802 16

Western Union Tel. Co. v. Pennsylvania, 1961, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139 16

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Constitution of Maryland, Art. 4, Sec. 20 15

Maryland Code, 1951 Ed:
Art. 16, Secs. 272, 273 & 276 10-13
Art. 26, Sec. 40 15
Art. 47, Sec. 36 10-13

District of Columbia Code, 1951 Ed:
Title 11, Sec. 11-401 15
Title 11, Sec. 11-771 17
Title 28, Ch. 26, Sec. 28-2602 13

District of Columbia Municipal Court Rule 69-e 12-14

MISCELLANEOUS

49 C. J. S., Judgments, Sec. 425-b, p. 841 16

Freeman on Judgments, 5th Ed., Vol. 1, Sec. 322 p. 643-45 6

Freeman on Judgments, 1925 Ed., Sec. 642, p. 1351 et seq. 6

INDEX TO APPENDIX ATTACHED HERETO

Order extending time to file petition for Writ of Certiorari 1

Opinion of U. S. Court of Appeals, 4 Cir. 1-2

Order of U. S. District Court 2-3

Order appointing trustee by Circuit Court for Prince George's County, Maryland 3-4

INDEX (Continued).

Memorandum Opinion of Municipal Court for the District of Columbia 4-6

Opinion of Municipal Court of Appeals for the District of Columbia, Pinkston v. Carter, 150 A.2d 629 7-12

Deed of Trust—Benefit of Creditors 12-16

Answer of Garnishee 16-17

Plaintiff's Traverse of Garnishee's Answer 18

Excerpt from Trusteeship Account 19

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Constitution of Maryland, Art. 4, Sec. 20 19

Maryland Code, 1951 Ed:
- Art. 16, Secs. 272, 273 & 276 20-21
- Art. 26, Sec. 40 20
- Art. 47, Sec. 36 21

District of Columbia Code, 1951 Ed:
- Title 11, Sec. 11-101 22
- Title 11, Sec. 11-771 22
- Title 28, Ch. 26, Sec. 28-2602 22

District of Columbia Municipal Court Rule 69-e .. 23

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. .....

JACK PINKSTON, GARNISHEE,

Petitioner,

vs.

NICHOLAS M. CARTER, ET UX

RUTH A. CARTER,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

TO — THE HONORABLE: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Jack Pinkston, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above case on September 30, 1963.

OPINIONS BELOW.

The memorandum opinion of the District Judge (R. 45), apparently unreported, is printed in Appendix hereto, infra, p. 2-3. The opinion of the Circuit Court of Appeals, reported in 322 F.2d 476, is printed in Appendix hereto.

infra, p. 2. Also necessary to a better understanding of this case is the order of the Circuit Court for Prince George's County, Maryland, dated May 1, 1957, appointing this petitioner as trustee to liquidate the assets of Holiday Homes, Inc. and Holiday Homes Mfg. Co., Inc. in a trusteeship proceeding for the benefit of all their creditors, which had been pending under the jurisdiction of said court since April 4, 1955, which order is not reported but is printed in Appendix hereto, infra, p. 3-4; the memorandum opinion, including findings of fact and conclusions of law, of the Judge of the Municipal Court for the District of Columbia, dated September 29, 1958 (pursuant to which, judgment was entered against this petitioner November 5, 1958), which memorandum is not reported but is printed in Appendix hereto, infra, p. 4-6; and the opinion of the Municipal Court of Appeals for the District of Columbia, decided May 1, 1959, reported 150 A.2d 629 and printed in Appendix hereto, infra, p. 7-12.

GROUNDS OF JURISDICTION

The judgment sought to be reviewed is the judgment of the United States Court of Appeals for the Fourth Circuit, entered on September 30, 1963, Appendix, infra, p. 2.

On December 30, 1963, Mr. Justice White entered an order extending time to file petition for writ of certiorari herein to and including January 13, 1964, Appendix, infra, p. 1

The statutory provision believed to confer jurisdiction on this Court to review the judgment in question by writ of certiorari is 28 U. S. C., Sec. 1254 (1).

QUESTION PRESENTED

Did the United States District Court for the District of Maryland have the power, and upon proper averments and tender of record evidence by petitioner the duty, to

inquire into the jurisdiction of the Municipal Court for the District of Columbia, a court of inferior jurisdiction, to consider the questions presented to it, to ignore the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of general and superior jurisdiction, pertaining to the same res, to deny petitioner, a citizen of Maryland, his right to due process of law in several respects, and to render the judgment which the United States District Court for Maryland then was being called upon to enforce under the rules pertaining to recording of inferior court judgments in the U. S. District Court for the District of Columbia and the transfer of those judgments to other districts?

STATUTES INVOLVED

(Quoted in Appendix hereto, infra)

	Page
Constitution of Maryland, Art. 4, Sec. 20	19
Maryland Code, 1951 Ed., Art. 16, Secs. 272, 273 & 276	20-21
Maryland Code, 1951, Ed., Art 26, Sec. 40	20
Maryland Code, 1951 Ed., Art. 47, Sec. 36	21
District of Columbia Code, 1951 Ed:	
Title 11, Sec. 11-101	22
Title 11, Sec. 11-771	22
Title 28, Ch. 26, Sec. 28-2602	22
District of Columbia Municipal Court Rule 69-c	23

STATEMENT

Writ of Certiorari is sought herein to review the judgment of the United States Court of Appeals for the Fourth Circuit, in case No. 9075 in said court, reported in 322 F.2d 476, styled Nicholas M. Carter, Ruth A. Carter, Appellees, vs. Jack Pinkston, Garnishee, Appellant, Appendix, infra, p. 2, affirming the order of the U. S. Dis-

trict Court for the District of Maryland denying petitioner's motion to quash attachments issued out of the U. S. District Court for the District of Maryland and levied against assets of petitioner in Maryland pursuant to a judgment of the Municipal Court for the District of Columbia. Petitioner's said motion to quash was based upon the total invalidity of the Municipal Court judgment for want of jurisdiction either of the subject matter or of the person of this petitioner, a citizen of Maryland, as garnishee, as well as upon denial of due process of law in several respects; but, notwithstanding the very limited statutory jurisdiction of the Municipal Court for D. C., a court of inferior jurisdiction, the nature of the subject matter involved, the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of superior and general jurisdiction, and the averments of lack of the due process of law in several respects, the Honorable U. S. District Judge for the District of Maryland held that the U. S. District Court in Maryland was without power to inquire into the jurisdiction of the Municipal Court for the District of Columbia or into the validity of the judgment of the Municipal Court then being enforced by the U. S. District Court for the District of Maryland."

This ruling by the Honorable U. S. District Court for Maryland seems exactly contrary to the ruling of the Supreme Court of the United States in *Durfee v. Duke*, No. 37, October Term, 1963, decided December 2, 1963, where, under similar circumstances as to territorial jurisdiction, this Court said (p. 10):

> "For the reasons stated, we hold in this case that the Federal Court in Missouri had the power, and upon proper averments the duty, to inquire into the jurisdiction of the Nebraska courts to render the decree quieting title to the land in the petitioners."

This view of the petitioner that the U. S. District Court

for the District of Maryland had both the power and the duty to inquire into the jurisdiction of the Municipal Court for the District of Columbia is made even stronger by the facts that in the Durfee vs. Duke case, supra, both of the Nebraska courts were courts of general or superior jurisdiction, while in the instant case the judgment sought to be enforced against this petitioner is a judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction. Furthermore, in the instant case, the Municipal Court plainly ignored the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of general and superior jurisdiction, in considering the issues presented and entering the judgment now sought to be enforced.

Petitioner will endeavor to refrain from treating the law, facts, and circumstances of this case as fully in this petition for writ of certiorari as the same should be treated in the event the writ is granted; but petitioner feels that some discussion is essential for a better understanding of the jurisdictional issues involved.

For brevity, petitioner is submitting herewith 9 copies of the Appendix to Appellant's Brief in the Court below. References hereinafter to "(App.)" refer to page numbers in said appendix. References to "Garnishee's Exhibit No. 1, pg.)" refer to the page number in Garnishee's Exhibit No. 1 in the Trial Court, which is the record of the Municipal Court for the District of Columbia. References to "(R.)" refer to the page number in the record of the Court below. References to "(Appendix, infra, p.)" mean the page number in the Appendix to this petition, infra.

ARGUMENT AND AUTHORITIES AMPLIFYING REASONS FOR GRANTING WRIT

Petitioner's position is that the Municipal Court for the District of Columbia has certain jurisdiction prescribed by Congress; that neither the parties to an action, the Municipal Court of Appeals for the District of Columbia, nor anyone else, except Congress, can enlarge upon said Municipal Court's jurisdiction, by agreement or otherwise; and that the adjudication of any matter beyond said Municipal Court's jurisdiction as prescribed and limited by Congress is void. Petitioner's further position is that the Muncipal Court judgment here in question is void for several reasons, as shown hereinafter.

That a void judgment never can become res judicata, please see Robertson v. Gordon, 226 U. S. 311, 33 S. Ct. 105, 57 L. Ed. 236; Freeman on Judgments, 1925 Ed., Sec. 642, pg. 1351 et seq.

An excellent expression covering the legal ineffectiveness of a void judgment is to be found in Freeman on Judgments, 5th Ed., Vol. 1, Sec. 322, p. 643-45, wherein it is said:

> "A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right, and affording no justification. Nothing can be acquired or lost by it, it neither bestows nor extinguishes any right, and may be successfully assailed whenever it is offered as the foundation for the assertion of any claim or title. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. No action upon the part of the plaintiff, no inaction on the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the govern-

nent can invest if with any of the elements of power or vitality. * * * The fact that the void judgment has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at anytime, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant."

Jurisdiction to adjudicate issues regarding trusteeships for the benefit of creditors, like titles to land, in most if not all jurisdictions, is expressly conferred upon courts of superior jurisdiction and denied to courts of inferior jurisdiction. Courts have no difficulty in holding that any judgment by a Justice of the Peace court affecting title to land, even within the State of the forum, is void and totally ineffective. This would be true *a fortiori* if a Justice of the Peace, a court of inferior jurisdiction, in one State attempted to adjudicate title to land in another State. In the instant case, a deed of trust—benefit of creditors falls into identically the same category as to jurisdiction as a deed to land under the laws of both the District of Columbia and Maryland. Both are committed to courts of superior jurisdiction and denied to courts of inferior jurisdiction. Certainly a judgment of the Municipal Court for D. C. purporting to determine title to land in Maryland would be ineffective and void regardless of affirmance on appeal by the Municipal Court of Appeals for the District of Columbia, an appellate court of inferior and limited jurisdiction which has no jurisdiction to determine title to land. The same must be true as regards the deed of trust—benefit of creditors in this case.

This petitioner is and at all times pertinent hereto has been domiciled and practicing law exclusively in Silver Spring, Maryland. At no time pertinent hereto has this petitioner engaged in any business, owned any property,

or practiced law in the District of Columbia, except for the three cases, all in connection with this Maryland Trusteeship for the Benefit of Creditors, as stated hereinafter, having been admitted specially to represent the defendant, Holiday Homes, Inc., in the Municipal Court for the District of Columbia in these cases only.

In 1954, two Delaware corporations, Holiday Homes, Inc. and Holiday Homes Mfg. Co., Inc., undertook to prefabricate small beach-type cottages for erection on land owned by purchasers. Though in some respects said corporations were operated jointly, the prefabrication plant, including all trucks, tools and equipment, was owned by Holiday Homes Mfg. Co., Inc. and situated at Upper Marlboro, Prince George's County, Maryland. Holiday Homes, Inc. did the selling and maintained sales offices in Upper Marlboro and in Silver Spring, Maryland, as well as in the District of Columbia—where the books were kept until March 4, 1955, and where the bank account was kept as long as they had a bank account, which was until about January, 1955. Houses were sold and erected upon land of purchasers, mostly in Maryland, with some being sold in Virginia and Delaware; but no houses were sold for erection in the District of Columbia, because said houses did not meet building code regulations in the District of Columbia. Said houses were sold on the basis of a small down payment, with the balance to be paid either upon completion of the house or at specific stages of construction. Both said companies were totally owned by the same two stockholders. On or about March 3, 1955 (Appendix, infra, p. 14), the General Manager, who was one of the stockholders, disappeared, leaving no money, but leaving many unpaid employees and other creditors, mostly in Maryland, with some in Virginia and the District of Columbia. Up to that time, this petitioner, who then was practicing law in Silver Spring, Maryland, had not had any connection with either of said companies or their

stockholders. Within a few days subsequent to March 3, 1955, all operations of both companies ceased, the employees left, and several of the creditors employed this petitioner to represent them as their attorney in collecting their claims against one or the other of said corporations. Practically all of the assets of said companies then were domiciled in Maryland, except about $100.00 worth of used office furniture which then was in the office previously used by Holiday Homes, Inc. in the District of Columbia. Most of the creditors likewise were domiciled in Maryland, and since most of the assets of both said companies consisted of money due on houses, mostly in Maryland, in various stages of construction and on which no money could be collected until said houses were completed, it was suggested by said stockholders during telephone conferences between this petitioner in his office in Maryland and said stockholders or their representatives in the District of Columbia, that this petitioner should take over all the assets of said companies and operate the same under a trusteeship for the benefit of all of the creditors, with the understanding that if all creditors thereby could be paid in full, plus the costs of the trusteeship, any assets thereafter remaining would be returned to the stockholders; or in the event all the creditors could not thereby be paid in full, then, and upon the realization of that contingency, the trustee should apply to the Circuit Court in Maryland where the assets were domiciled for permission to liquidate the same (Appendix hereto, infra, p. 14). Pending determination whether such a trusteeship would be agreeable to all the creditors, a working agreement was consummated on March 10, 1955, whereby this petitioner should manage the business of both said companies for 10% of the gross proceeds, until such time as it could be determined whether a valid and workable trusteeship for the benefit of the creditors could be accomplished (App. 40). After obtaining approval from most of the creditors

and no objection from any creditors, petitioner drafted a Maryland Deed of Trust—Benefit of Creditors, on a standard printed Maryland form (Appendix hereto, p. 16), strictly in accordance with Sec. 36, of Art. 47, and Secs. 272, 273 and 276, of Art. 16, Md. Code, 1951 (App. infra, p. 20-21), as agreed, and forwarded the same via U. S. Mail to said interested parties in the District of Columbia for their signatures. Said form was duly signed on or about March 25, 1955, by Carl L. Shipley, as Secretary of both said companies, and by Darwin C. Brown, representing the only other stockholder (Appendix hereto, infra, p. 15), and returned via U. S. Mail to petitioner, who accepted and filed the same on April 4, 1955, in the office of the Clerk of the Circuit Court for Prince George's County, Maryland the county wherein the plant, including the principal assets and principal operation of said companies, then was and always had been domiciled (Appendix hereto, p. 12). In the meantime, the only asset in the District of Columbia, being about $100.00 worth of used office furniture, had been removed to Maryland about March 10, 1955, due to an eviction suit having been filed in the Municipal Court of D. C. by the landlord of the District of Columbia office of Holiday Homes, Inc. due to non-payment of rent (App. 40). No asset of either of said companies remained in the District of Columbia after about March 10, 1955.

The point here being that the Municipal Court's findings that the Deed of Trust was a District of Columbia contract, that the companies' office then (on March 25, 1955) was in the District of Columbia, and that the companies' property was removed from the District of Columbia after March 25, 1955, are erroneous and without any foundation in the evidence.

Several months after the filing of the Deed of Trust in the Circuit Court for Prince George's County, State of Maryland, where all of the assets of said companies

were domiciled and situated, three suits were filed in the Municipal Court for the District of Columbia against one of the companies, Holiday Homes, Inc. (though none of the plaintiffs in said three suits resided in the District of Columbia), which this petitioner, as trustee, felt obliged to defend in the interest of the other 130-odd creditors, since these suits, according to petitioner's information, were groundless in whole or in part. As no money was available to employ other counsel, this petitioner was admitted specially to represent the defendant, Holiday Homes, Inc in the Municipal Court in D. C. in these three cases only.

On August 2, 1956, said Municipal Court notified this petitioner, as counsel for defendant, Holiday Homes, Inc., that hearings in both the other cases—not the Carter case—had been set in said Court in the District of Columbia for August 8, 1956 (App. 17-19). On August 7, 1956, while petitioner was in the Law Library in the District of Columbia preparing for said hearings, due to the fact that petitioner does not maintain District of Columbia law in his own library in Maryland, James P. Donovan, Counsel for plaintiffs, approached this petitioner and inquired whether petitioner would be present at said hearings next day. Upon being informed that in obedience to the notices from the Municipal Court, petitioner would be there for said hearings, said Counsel replied to this petitioner, "If you do, I will have a reception waiting for you." (App. 33-34). Knowing that under the law throughout the United States litigants, witnesses and counsel are immune from service of civil process while in attendance upon the trial of issues in a court in a foreign jurisdiction, including while going to and returning from said hearings, petitioner refused to be bluffed out of sustaining his obligation to the Municipal Court, and to the creditors who were the real parties in interest, and attended said hearings pursuant to said Court's notice. Upon the conclusion of said hearings on August 8, 1956, while the Judge was still on the Bench, Mr.

Donovan, Counsel for plaintiffs in both cases being heard, as well as counsel for plaintiffs in the instant case, motioned to a Deputy Marshal who had been sitting in the courtroom for some time, Mr. Donovan then pointed to this petitioner and said to the Deputy Marshal, "There is your man." Whereupon, said Deputy Marshal served upon this petitioner there in the courtroom the attachment in this case (App. 14-16), as well as an attachment in one of the cases then on hearing (App. 34). This petitioner duly and timely filed and served upon counsel for plaintiffs on August 18, 1956, as one pleading, a Motion to Quash said attachments, due to said unlawful service, and Answer to writ of Attachment or Garnishment, certifying under oath that garnishee had no assets of the defendant, Holiday Homes, Inc. (Appendix hereto, infra, p. 16-17). Since no traverse of garnishee's answer was filed within five days after said answer was filed and a copy served on counsel for plaintiffs, as required by D. C. Municipal Court Rule 69-e (Appendix infra, p. 23), garnishee (Petitioner) filed motion on September 10, 1956, for judgment discharging garnishee (App. 20). Both garnishee's motion to quash service and garnishee's motion for judgment discharging garnishee were denied, the Municipal Court Judge, Judge Munter, then holding that garnishee already had been discharged by operation of law on garnishee's answer since no traverse of said answer had been filed by plaintiff within five days as required by Municipal Court Rule 69-e, supra. Six days after said rulings in the Municipal Court, on September 20, 1956, plaintiff filed traverse of garnishee's answer (Appendix, infra, p. 18). Even then said traverse, not being signed by plaintiff and not being under the oath of anyone, did not anywhere allege that garnishee then had either any money, any property or any credits of the defendant, Holiday Homes, Inc; but instead, said traverse alleged only that there were irregularities in the trusteeship, and that the garnishee,

as trustee for the benefit of creditors of defendant, Holiday Homes, Inc., had collected amounts in excess of plaintiff's claim (Appendix infra, p. 18). Plaintiff simply attacked the validity of the trusteeship; and the law is perfectly clear that the Municipal Court for the District of Columbia had no jurisdiction whatever to consider or adjudicate any of the issues presented by plaintiff's traverse, because, among other things, all issues pertaining to trusteeships for the benefit of creditors have been expressly referred to the United States District Court for the District of Columbia (Please see District of Columbia Code, 1951 Ed., Title 28, Ch. 26, Sec. 28-2602, Appendix infra, p. 22), and not to the Municipal Court.

On May 1, 1957, the trustee petitioned the Circuit Court for Prince George's County, Maryland, for leave to liquidate the assets of said companies on the ground that the possible contingency contemplated in the Deed of Trust agreement (that the creditors could not be paid in full through the operation of the trusteeship) had been determined (Appendix, infra, p. 13-14); and trustee was granted leave by said Court to liquidate said assets (Appendix, infra, p. 3-4). All of these trusteeship proceedings in the Circuit Court for Prince George's County, Maryland, were strictly in accordance with Section 36, Article 47, Sections 276, 272 and 273, Article 16, Maryland Code, 1951 Ed. (Appendix infra, p. 21), which are the provisions of the Maryland Code under which the Deed of Trust—Benefit of Creditors was drafted in the beginning (Appendix, infra, p. 12-16).

On April 16, 1958, nearly a year after the Maryland court order to liquidate the trusteeship assets (Appendix, infra, p. 3-4), and the filing of bond by the trustee on May 1, 1957, as required by Maryland law (Art. 16, Sec. 276, supra), Judge Walsh, another Judge of the Municipal Court for the District of Columbia, ignoring the previous ruling of Judge Munter of the same Court over 19 months

earlier that garnishee already had been discharged by operation of law since plaintiff had not filed a traverse of garnishee's answer within five days as required by Municipal Court Rule 69-e (Appendix infra, p. 23), and, with full knowledge of the existence of the trusteeship proceedings in a court of competent and general jurisdiction in Prince George's County, Maryland (Appendix, infra, p. 3-4), called up said belated traverse of garnishee's answer, ignored said proceedings in the Circuit Court for Prince George's County, Maryland, proceeded to adjudicate all facets of the validity of said trusteeship based upon plaintiffs' traverse, to hold that plaintiffs' traverse—filed 33 days after garnishee's answer—was timely filed, notwithstanding Municipal Court Rule 69-e supra, and to render judgment against this petitioner as garnishee on November 5, 1958 (App. 2-3).

Judge Walsh filed a memorandam, including findings of fact and conclusions of law which showed conclusively that he heard, considered and adjudicated only issues affecting the validity of the trusteeship (Appendix, infra, p. 4-6).

The record of the Municipal Court and the Court below are abundantly clear that said trusteeship involved amounts in excess of $30,000.00 (Appendix, infra, p. 19). It is also clear from plaintiffs' traverse (Appendix infra, p. 18), and the memorandum of the Municipal Court (Appendix infra, p. 4-6), that the Municipal Court had nothing before it and considered nothing except the validity of the trusteeship as a whole. That the Municipal Court for the District of Columbia, whose maximum jurisdictional limit is $3,000.00, was without jurisdiction to consider matters pertaining to the validity of a trusteeship involving in excess of $30,000.00, please see *Boules v. Stonebraker*, 1949, Mun. App. D. C. 65 A.2d 575; *Peterson v. Sucro*, 1938, C. C. A. 4 Cir., 93 F.2d 878, 882.

That the circuit courts for the several counties in Maryland are courts of general and superior jurisdiction, please see Constitution of Maryland, Art. 4, Sec. 20 (Appendix, infra, p. 19), and the Annotated Code of Maryland, 1951 Ed., Art. 26, Sec. 40 (Appendix, infra p. 20).

That the Municipal Court for the District of Columbia is by the statute of its creation specifically made a court of inferior jurisdiction, please see District of Columbia Code, 1951 Ed., Title 11, Sec. 11-101 (Appendix, infra, p. 22).

That the Municipal Court for the District of Columbia had no power to override the proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of superior jurisdiction, sitting as a court of equity, on matters relating to identically the same subject matter, which subject matter then was physically present within and under the jurisdiction of said Maryland Court; and that such action on the part of said Municipal Court in a foreign jurisdiction amounted to a violation of the comity between courts, see, *Harkin v. Brundage*, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457; *Penn Co. v. Pennsylvania*, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850.

That the Municipal Court for the District of Columbia did not and could not afford this petitioner, as trustee for the benefit of 134 creditors duly appointed by a Maryland State court of general jurisdiction due process of law when it favored the plaintiffs Carter, who likewise were not residents of the District of Columbia, as it did, over the remaining creditors when none of the other creditors were before said Municipal Court and could not be brought before said court, because said court does not have jurisdiction over trusteeship proceedings, and further because said other creditors, as well as the res of the trusteeship, were not domiciled in the District of Columbia, please see

Western Union Tel. Co. v. Pennsylvania, 1961, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139. Furthermore, the Circuit Court for Prince George's County, Maryland, is not subject to the orders of the Municipal Court for the District of Columbia.

That nothing can be presumed in favor of a judgment of a court of inferior or limited jurisdiction as against a collateral attack, please see *Warm Springs Irr. Dis. vs. May*, 1941, 9 Cir., 117 F.2d 802; *Galpin v. Page*, 18 Wall 350, 21 L. Ed. 959; *McClaughry vs. Deming*, 186 U. S. 49, 22 S. Ct. 786, 46 L. Ed. 1049; *Collins vs. McDonald*, 258 U. S. 416, 42 S. Ct. 326, 66 L. Ed. 692; 49 C. J. S., Judgments, Sec. 425-b, p. 841. The burden is upon respondents, therefore, in every respect to show that the judgment of the Municipal Court for the District of Columbia here in question is valid. No reporter was available to take such evidence as plaintiff adduced, but if the proceedings in the Municipal Court had been recorded, such recording would show conclusively that this petitioner, as garnishee, never was afforded an opportunity to present garnishee's evidence. Respondents contend that since the garnishee was called as a witness for plaintiff, the evidence thus elicited from garnishee constituted garnishee's evidence, but this clearly is not the law.

On January 2, 1959, (App. 37), 8½ months after plaintiff adduced plaintiffs' evidence on April 16, 1958, (App. 37), Judge Walsh of the Municipal Court prepared a Statement of Proceedings and Evidence (App. 37), since no reporter was present to record plaintiff's evidence as aforesaid. Petitioner submits that said statement, being prepared from memory after the elapse of such a long time, is somewhat lacking in accuracy. Yet said statement does not establish that garnishee ever was given an opportunity to present garnishee's evidence; and petitioner knows that although he requested such an opportunity, it was not given him.

That it was erroneous, to say the least, to attach the assets of the trusteeship and/or of this petitioner as trustee, while this petitioner was physically present within the courtroom of the Municipal Court, having gone into said foreign jurisdiction only in respone to notice from the Municipal Court that hearings involving trusteeship cases then would be held in said Municipal Court, please see *Stewart v. Ramsey*, 242 U. S. 128, 37 S.Ct. 44, 61 L.Ed. 192; *Page Co. v. McDonald*, 261 U. S. 446, 43 S. Ct. 416, 67 L. Ed. 737; *Lamb v. Schmidt*, 285 U. S. 222, 52 S. Ct. 317, 76 L. Ed. 720; *Durst v. Tautges, Wilder & McDonald*, 7 Cir., 44 F.2d 507; *Engle v. Manchester*, 46 App. D. C. 220; *Hollige v. Crumpler*, 63 App. D. C. 330; *Stutsman v. Hilltop Farm & Feed Co.*, (Iowa), 45 N. W. 2d 892; In Re *Vanvakis*, 99 N. Y. S. 2d 406; and that the tendency is to extend rather than to restrict the rule of immunity from such service, please see. *J. & H. Stables, Inc., vs. Robinson*, 1960, 221 Md. 365, 157 A.2d 451.

Garnishee (this petitioner) took an appeal of said judgment to the Municipal Court of Appeals for the District of Columbia, without avail (*Pinkston v. Carter*, 150 A.2d 629, Appendix infra, p. 7-12), but petitioner submits that the Municipal Court of Appeals for the District of Columbia was by the statute of its creation made an intermediate or inferior Court of Appeals, whose only function was to review appeals from the Municipal Court and the Juvenile Court for the District of Columbia and not a court of superior or general jurisdiction. Please see District of Columbia Code, 1951 Ed., Title 11, Sec. 11-771 (Appendix, infra, p. 22).

Clearly, the Municipal Court of Appeals for the District of Columbia could not bestow upon the Municipal Court for the District of Columbia powers and jurisdictions which Congress did not give to the Municipal Court for the District of Columbia, and the records are clear regarding the issues submitted to the Municipal Court by

plaintiffs' traverse, and the adjudication of said issues relating to a trusteeship for the benefit of creditors involving in excess of $30,000.00 by the Municipal Court for the District of Columbia.

The Municipal Court of Appeals said, at p. 631:

> "The Trial Court did not administer or supervise a trust; nor did it make any attempt to decide what should be done with the corpus of the general trust fund." (Appendix hereto, infra, p. 8).

Actually the Municipal Court held, as it had to hold in order to render the judgment it did, as follows:

> "2. The said deed of assignment is invalid ...."; etc. (Appendix, infra, p. 6).

Holding that the deed of assignment "is invalid", certainly does dispose of "the corpus of the general trust fund", and in a manner exactly contrary to the prior decree of the Circuit Court for Prince George's County, Maryland (Appendix, infra, p. 3-4).

There is no appeal by right from judgments of the Municipal Court to any court higher than said Municipal Court of Appeals.

Respondents contend, and the courts below agreed, that the judgment of the Municipal Court for the District of Columbia is valid, res judicata and binding; but the question is, which judgment was and is res judicata in fact, the judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction, or the prior orders, decrees and proceedings in the Circuit Court for Prince George's County, Maryland, a court of general or superior jurisdiction?

Although the matter of the prior proceedings in the Circuit Court for Prince George's County, Maryland, was clearly before both the Municipal Court and the Municipal Court of Appeals for the District of Columbia, neither

court considered or ruled upon the full faith and credit, the res judicata or the rule of comity effects of said prior proceedings upon the jurisdiction of the Municipal Court; and neither did either court for the District of Columbia rule upon the lack of due process of law afforded this petitioner by reason of the lack of either the territorial or subject matter jurisdiction in the Municipal Court over the other creditors, the Circuit Court for Prince George's County, Maryland, or the issues involving trusteeships for the benefit of creditors. These jurisdictional questions cannot be res judicata as held by the Courts below, because these issues were not passed upon by the Municipal Court or the Municipal Court of Appeals for the District of Columbia.

CONCLUSION

In conclusion, petitioner respectfully submits that the judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction, is void and should be vacated, because:

(1) Said Municipal Court clearly assumed jurisdiction over matters and property exclusively within both the territorial and subject matter jurisdiction, in custodia legis in fact, of the Circuit Court for Prince George's County, Maryland, proceeded to ignore and to oust the jurisdiction of said Maryland court, a court of superior and general jurisdiction, and to adjudicate the issues pertaining thereto exactly contrary to the prior determinations of said Maryland court covering the same res and issues;

(2) The Municipal Court did consider and adjudicate issues involving the validity of a deed of trust and a trusteeship for the benefit of creditors when clearly it had no jurisdiction or power to do so;

(3) The Municipal Court did adjudicate the Validity of a trusteeship for the benefit of creditors involving amounts in excess of $30,000.00, when the extent of the jurisdiction of said Municipal Court was

strictly limited by statute to matters involving $3000.00 or less;

(4) The Municipal Court did not and could not afford this petitioner, as garnishee, due process of law, because neither the subject matter, the other creditors, nor the Circuit Court for Prince George's County, Maryland were within or could be brought within either the territorial or subject matter jurisdiction of the Municipal Court;

(5) The Municipal Court denied this petitioner due process of law by unlawfully assuming jurisdiction over this petitioner as garnishee, by reason of the service of an attachment upon this petitioner in the courtroom of the Municipal Court when this petitioner had gone into said courtroom in the foreign jurisdiction of the District of Columbia solely in obedience to the orders of said court setting other cases for hearing at said time;

(6) The Municipal Court denied this petitioner due process of law by denying this petitioner, as garnishee, an opportunity to present garnishee's evidence, though garnishee specifically requested such opportunity.

(7) The judgment entered against this petitioner by Judge Walsh on November 5, 1958, is void for the further reason that it was entered more than two years subsequent to the ruling of Judge Munter on or about September 14, 1956, that petitioner already had been discharged upon garnishee's answer of no assets, filed on August 18, 1956, since no traverse had been filed by plaintiff within five days as required by Municipal Court Rule 69-c.

WHEREFORE, petitioner prays that writ of certiorari herein be granted.

Respectfully submitted,

JACK PINKSTON, Petitioner, Pro Se,
A Member of the Bar of this Court
8403 Georgia Avenue
Silver Spring, Maryland
Phone 585-2844